

## ISSUES

The respondent appeals from preliminary hearing order which requires respondent to provide psychological treatment at the direction of Dr. Timothy R. Rot and required the respondent to pay temporary total benefits beginning December 19, 1993. On appeal respondent states that the issues are:

- (1) Whether claimant met with personal injury by accident arising out of and in the course of his employment;
- (2) Whether the administrative law judge has jurisdiction to order that a specific psychologist provide the treatment;
- (3) Whether psychological therapy ordered was related to claimant's alleged accident;
- (4) Whether respondent should have been allowed to select the provider of psychological therapy or allowed to provide a list of three names pursuant to K.S.A. 44-510(14)(c)(1).

Claimant has moved to dismiss the Appeal on grounds that the selection process for appointment of the Appeals Board is unconstitutional.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant's motion to dismiss is denied. The Appeals Board is acting, pursuant to statute enacted by the Kansas Legislature, K.S.A. 44-555g, and presumed to be constitutional. *Blue v. McBride*, 252 Kan. 894, 850 P.2d 852 (1993). Unless a court of competent jurisdiction rules that the presumption is overcome, the Appeals Board will continue to carry out its statutory responsibilities.

On appeals from preliminary orders the jurisdiction of the Appeals Board is limited to appeals alleging that the Administrative Law Judge has exceeded his or her jurisdiction. K.S.A. 44-551. Jurisdictional issues which are subject to review on appeal from preliminary orders include those listed in K.S.A. 44-534a. Among those is the first issue listed by the respondent in this case, i.e. whether claimant met with personal injury by accident arising out of and in the course of his employment. After reviewing the record, including the medical reports, the Appeals Board finds that the evidence does support claimant's allegation that he has suffered an aggravation of a pre-existing carpal tunnel condition as a result of work duties including the charting of patients for respondent.

With regard to the second and fourth issues listed by the respondent, the Appeals Board has previously found that an Administrative Law Judge has jurisdictional authority to order a specific health care provider. This is not a circumstance involving change of physicians as suggested by reference to K.S.A. 44-510(14)(c)(1). Accordingly the decision to name Dr. Timothy Rot is hereby also affirmed.

Finally, the decision regarding whether the psychological condition is related to the physical injury is not one which alleges a jurisdiction issue. Under Kansas Law psychological treatment may be ordered if the psychological problems are directly traceable to the physical injury. This requires a determination which is one step removed

from the decision regarding whether claimant suffered an accidental injury arising out of and in the course of his employment. The issue relates instead to the nature and extent of claimant's injury. Accordingly that issue is not subject to review on appeal from the preliminary orders. See Cunningham v. Michael E. Michael, D.D.S., Docket No. 177,523 ( April 1994).

The decision of Administrative Law Judge is, therefore, affirmed in all respects.

**AWARD**

**WHEREFORE** it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward, dated April 7, 1994, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc:

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**DOCKET NO. 186,411**

James R. Ward, Administrative Law Judge  
George Gomez, Director